

1 ROGERS JOSEPH O'DoNNELL
 2 Robert C. Goodman (SBN 111554)
 3 Ann M. Blessing (SBN 172573)
 4 D. Kevin Shipp (SBN 245947)
 5 311 California Street
 6 San Francisco, California 94104
 7 Telephone: 415.956.2828
 8 Facsimile: 415.956.6457
 9 E-mail: rgoodman@rjo.com; ablessing@rjo.com; kshipp@rjo.com

10 Attorneys for Defendants
 11 CHARLES FREDERICK HARTZ DBA PAUL'S
 12 SPARKLE CLEANERS AND CHARLES F. HARTZ

13
 14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16 PALMTREE ACQUISITION CORPORATION,
 17 a Delaware corporation,

18 Plaintiff,

19 vs.

20 MICHAEL R. NEELY, an individual; PERRY J.
 21 NEELY, an individual; GARY NEELY, an
 22 individual; MICHAEL R. NEELY, PERRY J.
 23 NEELY and GARY NEELY dba MIKE'S ONE
 24 HOUR CLEANERS; CHARLES FREDERICK
 25 HARTZ dba PAUL'S SPARKLE CLEANERS;
 26 CHARLES F. HARTZ, an individual;
 27 MULTIMATIC CORPORATION, a New Jersey
 corporation; WESTERN STATES DESIGN, a
 California corporation; MCCORDUCK
 PROPERTIES LIVERMORE, LLC, a Delaware
 limited liability company individually and as the
 successor to JOHN MCCORDUCK ,
 KATHLEEN MCCORDUCK, PAMELA
 MCCORDUCK, SANDRA MCCORDUCK
 MARONA, and IMA FINANCIAL
 CORPORATION, a California corporation;
 JOHN MCCORDUCK individually;
 KATHLEEN MCCORDUCK individually;
 PAMELA MCCORDUCK individually;
 SANDRA MCCORDUCK MARONA
 individually; IMA FINANCIAL
 CORPORATION, a California corporation;
 STARK INVESTMENT COMPANY, a
 California general partnership; GRUBB &
 ELLIS REALTY INCOME TRUST,

1 Case No. CV 08 3168 EMC

2 **STIPULATION AND [PROPOSED]**
 3 **ORDER RE MCCORDUCK**
 4 **DEFENDANTS' AND IMA**
 5 **FINANCIAL'S ANSWERS TO**
 6 **SECOND AMENDED COMPLAINT**

1 LIQUIDATING TRUST, a California trust; and
2 DOES 1-20, inclusive,

3 Defendants.
AND RELATED ACTIONS

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page 2

STIPULATION AND [PROPOSED] ORDER RE MCCORDUCK DEFENDANTS' AND IMA FINANCIAL'S
ANSWERS TO SECOND AMENDED COMPLAINT
CASE NO: CV 08 3168 EMC

RECITALS

A. Plaintiff Palmtree Acquisition Corporation filed this action (“Action”) as a “reopener” of a prior action that was conditionally settled, which prior action was filed on February 3, 1993 in the United States District Court for the Northern District of California, entitled *Grubb & Ellis Realty Trust v. Catellus Development Corp., et al.*, and related cross-actions, Case No. C93-0383 SBA (“Prior Action”).

B. In the course of litigating the Prior Action, the parties to the Prior Action engaged in discovery relating to the factual background, ownership and operations of certain of the parties to the Prior Action and their conduct which may have resulted in the PCE contamination.

C. On February 7, 1994, the parties to the Prior Action entered into a settlement agreement (“1994 Settlement”). On February 17, 1994, this Court entered an order approving the settlement agreement and dismissing the Prior Action.

D. Pursuant to the 1994 Settlement, the parties agreed that the release amongst each other would not extend to:

...any claims, causes of action, obligations, damages, expenses or liabilities resulting from (1) claims or cross-claims arising from actions brought by third parties after the date of this agreement relating to PCE [perchloroethylene] contamination at the properties, or (2) actions by governmental agencies requiring cleanup of PCE contamination or seeking recovery of governmental response costs for the cleanup of PCE contamination: (a) of the deeper aquifer as defined in Paragraph 5 of SCO [Site Cleanup Order], or (b) in the form of DNAPLs, defined as PCE found in pore-water concentrations which exceed their effective solubilities as measured using the residual DNAPL detection method of Feenstra, Mackay, and Cherry (1991). The limitations expressed in the preceding sentence on the release contained in this paragraph are referred to as “the Paragraph 9 reopeners”.

1 E. On March 17, 2008, and March 21, 2008, the California Regional Water
2 Quality Control Board (“RWQCB”), a governmental agency, sent letters to certain of the
3 defendants and the plaintiff, and/or their predecessors, requiring the further investigation and
4 monitoring of PCE contamination which potentially impacted the deeper aquifer that may be
5 in the form of DNAPLs, thereby triggering the “Paragraph 9 reopeners” (“RWQCB
6 Directives”). As a result of the RWQCB Directives, certain parties to the prior 1994
7 Settlement, made a demand upon other parties asserting that the Paragraph 9 reopeners applied
8 and demanding that they respond to the RWQCB Directives.

9 F. On July 1, 2008, plaintiff Palmtree Acquisition Corporation, the successor to
10 one of the 1994 Settlement parties, Catellus Development Corporation, filed a Complaint for
11 CERCLA Cost Recovery, Damages and Declaratory Relief, seeking contribution and
12 damages (“the Original Complaint”) against certain of other parties to the 1994 Settlement,
13 pursuant to the Paragraph 9 reopeners.

14 G. Defendant The Grubb & Ellis Realty Income Trust, Liquidating Trust
15 (“GERIT”) has not appeared, is not represented by counsel, and claims to have dissolved and
16 to no longer exist, and thus is not a party to this stipulation.

17 H. On September 15, 2008 Judge Edward M. Chen signed a stipulation and order
18 (Document No. 13) providing that, among other things, the defendants were deemed to have
19 denied each and every allegation in the Original Complaint, that defendants were deemed to
20 have filed crossclaims against each other for contribution and indemnity, and deemed to have
21 filed counterclaims for contribution and indemnity against Plaintiff.

22 I. Subsequent to the filing of the Original Complaint, certain parties agreed to
23 cooperate in jointly retaining an environmental consultant to respond to the RWQCB
24 Directives. The environmental consultant has been engaged with the RWQCB and the parties
25 have made substantial progress towards meeting the demands of the RWQCB.

26 J. Subsequent to the filing of the Original Complaint, the parties participated in
27 mediation with Timothy Gallagher, Esq., during which the parties engaged in an in depth

1 discussion and investigation relating to the factual background, ownership and operations of
 2 the parties and their conduct which may have resulted in the PCE contamination.

3 K. On July 14, 2010 plaintiff Palmtree Acquisition Corporation filed its First
 4 Amended Complaint (“FAC”), adding Northrop Grumman Systems Corporation (“Northrop
 5 Grumman”) as a party. Northrop Grumman has settled this matter and been dismissed with
 6 prejudice from this action and thus need not respond to the SAC.

7 L. On July 14, 2011 plaintiff Palmtree Acquisition Corporation filed its Second
 8 Amended Complaint (the “Current Action” or “SAC”), clarifying plaintiff’s intent to include
 9 in the original complaint and/or adding defendants John McCorduck, Kathleen McCorduck,
 10 Pamela McCorduck, Sandra McCorduck Marona, (“collectively the “Individual McCorduck
 11 Defendants”) and IMA Financial Corporation (“IMA Financial”).

12 M. On July 28, 2011 a stipulation and proposed order was filed in which the
 13 parties who signed the stipulation agreed that the signing defendants would be deemed to
 14 have denied each and every allegation in the SAC and would be deemed to have filed cross-
 15 claims and counter-claims for contribution and indemnity.

16 N. The Individual McCorduck Defendants and IMA Financial were not parties to
 17 the July 28, 2011 stipulation and proposed order because they had not yet been served with
 18 the SAC or waived service.

19 O. On August 3, 2011 the Court filed an Order approving the July 28, 2011
 20 stipulation.

21 P. The Individual McCorduck Defendants and IMA Financial have now waived
 22 service of the SAC.

23 Q. The responses and defenses of the Individual McCorduck Defendants and IMA
 24 Financial should be substantially similar to those raised by the parties named in the Prior
 25 Action.

26 Therefore, in the interest of judicial economy, pursuant to Local Rule 6-1(b) and 7-12,
 27 the parties below hereby agree and stipulate as follows:

STIPULATION

1. The Individual McCorduck Defendants and IMA Financial shall be deemed to have denied each and every allegation in the SAC.

2. The Individual McCorduck Defendants and IMA Financial shall be deemed to have filed cross-claims and/or counterclaims against each other defendant in the Current Action for contribution and indemnity and to have filed counter-claims for contribution and indemnity against the plaintiff. The Individual McCorduck Defendants and IMA Financial and/or McCorduck Properties Livermore, LLC shall not be deemed to have filed cross-claims and/or counterclaims against one another.

3. Each Defendant, other than the Individual McCorduck Defendants and IMA Financial and McCorduck Properties Livermore, LLC, who has signed this stipulation and proposed order shall be deemed to have filed cross-claims and/or counterclaims against the Individual McCorduck Defendants and IMA Financial for contribution and indemnity.

4. The Individual McCorduck Defendants and IMA Financial reserve the right to supplement their response to the SAC, and may file an answer and separate crossclaims and/or counterclaims at a later date, but no later than 60 days following the conclusion of mediation with mediator Timothy Gallagher, currently underway. Mediation will be concluded at such time as: (a) a settlement is reached, or (b) the mediator issues a letter concluding that a settlement has not been reached and the mediation is concluded. The Individual McCorduck Defendants and IMA Financial have not waived the right to assert new affirmative defenses that were not previously asserted and the right to file cross-claims and/or counterclaims.

5. The Individual McCorduck Defendants and IMA Financial further reserve their right to file cross-claims and/or counterclaims against third parties who are not parties to this Current Action, and reserve any and all rights against such third parties. The Individual McCorduck Defendants and IMA Financial reserve their right to file cross-claims and/or counterclaims against parties named in the Fourth Amended Third Party Complaint filed by

1 third party plaintiffs Stark Investment Company and the Kirrberg Corporation. The plaintiff
2 reserves the right to amend the complaint to add or remove allegations, to add new parties or
3 to make any other changes consistent with the Federal Rules of Civil Procedure.

4 Wherefore, the Parties respectfully request that the Court approve this Stipulation.

5
6 Dated: October 20, 2011

COX, CASTLE & NICHOLSON LLP

7
8 By: /s/ Peter M. Morrisette
9 Stuart I. Block
Peter M. Morrisette
10 Attorneys for Plaintiff
PALMTREE ACQUISITION
11 CORPORATION, a Delaware corporation
f/k/a Catellus Development Corporation

12 Dated: October 21, 2011

BASSI EDLIN HUIIE & BLUM LLP

13
14 By: /s/ Noel Edlin
Noel Edlin
15 Attorneys for Defendants
MICHAEL R. NEELY, an individual;
16 PERRY J. NEELY, an individual; GARY
17 NEELY, an individual; MICHAEL R.
NEELY, PERRY J. NEELY and GARY
18 NEELY dba MIKE'S ONE HOUR
CLEANERS

19 Dated: October 21, 2011

GONSALVES & KOZACHENKO

20
21 By: /s/ Selena P. Ontiveros
Selena P. Ontiveros
22 Attorneys for Defendant
23 STARK INVESTMENT COMPANY, a
California limited partnership

24 Dated: October 24, 2011

DONGELL LAWRENCE FINNEY LLP

25
26 By: /s/ Thomas F. Vandenburg
Thomas F. Vandenburg
27 Attorneys for Defendant
28 MULTIMATIC CORPORATION, a New
Jersey corporation

Page 7

1
2 Dated: October 21, 2011

ROGERS JOSEPH O'DONNELL

3 By: /s/ Robert C. Goodman

4 Robert C. Goodman
5 Attorneys for Defendant
6 CHARLES FREDERICK HARTZ dba
7 PAUL'S SPARKLE CLEANERS;
CHARLES F. HARTZ, an individual

8 Dated: October 21, 2011

9 GORDON WATROUS RYAN
10 LANGLEY BRUNO & PALTENGHI
11 INC.

12 By: /s/ Bruce Clinton Paltenghi

13 Bruce Clinton Paltenghi
14 Attorneys for Defendant
15 McCORDUCK PROPERTIES
16 LIVERMORE, LLC, a Delaware limited
liability company individually and as the
successor to JOHN McCORDUCK,
17 KATHLEEN McCORDUCK, PAMELA
McCORDUCK, and SANDRA
McCORDUCK MARONA and for JOHN
McCORDUCK; individually; KATHLEEN
McCORDUCK, individually; PAMELA
McCORDUCK, individually; SANDRA
McCORDUCK MARONA; individually

18 Dated: October 20, 2011

19 STANZLER LAW GROUP

20 By: /s/ Jordan S. Stanzler

21 Jordan S. Stanzler
22 Attorneys for Defendant
IMA FINANCIAL CORPORATION, a
23 California corporation

24 Dated: October 21, 2011

25 FOLEY MCINTOSH FREY & CLAYTOR

26 By: /s/ James D. Claytor

27 James D. Claytor
28 Attorneys for Defendant
WESTERN STATES DESIGN, a
California corporation

1 Dated: October 23, 2011

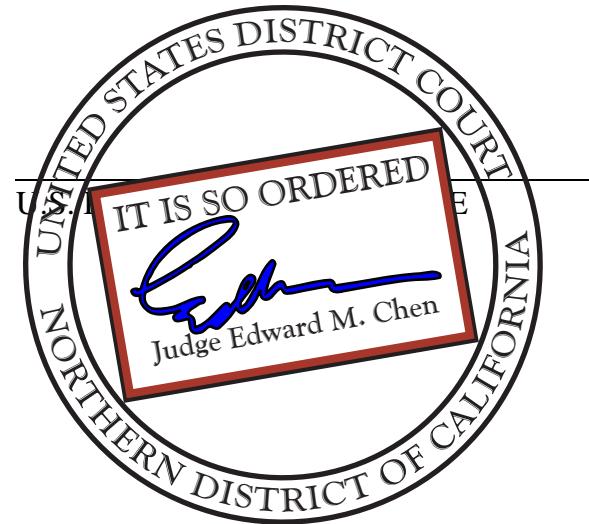
THE COSTA LAW FIRM

2 By: /s/ Daniel P. Costa

3 Daniel P. Costa
4 Attorneys for Defendant
5 STARK INVESTMENT COMPANY

6 IT IS SO ORDERED

7 Dated: 10/27/11



8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page 9

STIPULATION AND [PROPOSED] ORDER RE MCCORDUCK DEFENDANTS' AND IMA FINANCIAL'S
ANSWERS TO SECOND AMENDED COMPLAINT
CASE NO: CV 08 3168 EMC

307453.1